



FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35724]

California High-Speed Rail Authority—Construction Exemption—In Merced, Madera and Fresno Counties, Cal.

On March 27, 2013, California High-Speed Rail Authority (Authority), a noncarrier state agency, filed a petition for exemption (Petition) under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10901 to construct an approximately 65-mile dedicated high-speed passenger rail line between Merced and Fresno, California (the Project). Concurrently, the Authority filed a motion to dismiss the Petition for lack of jurisdiction (Motion to Dismiss), asserting that the Project does not require Board approval under 49 U.S.C. § 10901 because it will be located entirely within California, will provide only intrastate passenger rail service, and will not be constructed or operated “as part of the interstate rail network” under 49 U.S.C. § 10501(a)(2)(A).

The Project is one section of the planned California High-Speed Train System (HST). Also referred to as the Merced to Fresno HST Section,<sup>1</sup> the Project would be the first of nine sections of the HST, which, when complete, would provide intercity passenger rail service at speeds up to 220 miles per hour over more than 800 miles of rail

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<sup>1</sup> Pet. 2.

line, primarily between San Diego and San Francisco.<sup>2</sup> The Authority intends to construct the Project in segments and plans to award contracts for the final design and construction of the first 29-mile portion of the approximately 65-mile line in the Project in the spring or summer of 2013.<sup>3</sup> For that reason, the Authority requests expedited consideration of the Petition and Motion to Dismiss and a decision effective by June 17, 2013.

To date, the Board has received comments from Federal, state and local elected officials, residents, landowners, water districts, school districts, grassroots organizations, and other interested parties. Several of those parties have requested an extension of the 20-day period for replies under 49 C.F.R. § 1104.13(a). On April 11, 2013, the Authority responded that it would have no objection to a 15-day extension of the deadline for filing replies to the Motion to Dismiss and Petition (to May 1) but would object to a longer extension.<sup>4</sup> By decision served April 15, 2013, the Board instituted a proceeding and tolled the period for filing responses to the Petition and the Motion to Dismiss pending further Board order.

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<sup>2</sup> Pet. 3. The entire HST system will connect the major population centers of Sacramento, the San Francisco Bay Area, the Central Valley, Los Angeles, the Inland Empire, Orange County, and San Diego. Id.

<sup>3</sup> Pet. 4, 13-14.

<sup>4</sup> Authority Reply 3-4.

Motion to Dismiss. The record currently before the Board, along with other publicly available materials, provides sufficient information for the Board to conclude that it has jurisdiction over construction of the California HST system, including the Project. Therefore, replies to the Motion to Dismiss are unnecessary, and the Motion to Dismiss will be denied. The Board will set forth its reasons for denying the Motion to Dismiss in its subsequent decision on the merits.

Replies to the Petition for Exemption. Given the significant interest in public participation in this proceeding, the period for replies to the Petition will be extended to May 8, 2013, to permit sufficient time for interested persons to prepare and file responses. The Board will determine whether the exemption criteria under 49 U.S.C. § 10502(a) are satisfied after reviewing the public comments.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The Authority's Motion to Dismiss is denied.
2. Replies to the Petition are due by May 8, 2013.
3. This decision will be published in the Federal Register.
4. This decision is effective on its service date.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey. Vice Chairman Begeman concurred in part and dissented in part.

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VICE CHAIRMAN BEGEMAN, concurring in part and dissenting in part:

I agree that sufficient information exists about the proposed California High-Speed Train System (HST) to conclude that the Board has jurisdiction over it, based largely on the publicly available information that I have been reviewing since the Petition and Motion to Dismiss were filed last month. But that is where my agreement with this decision ends.

The Board's finding of jurisdiction should be accompanied by a rationale to support that finding, instead of waiting to disclose it in a subsequent decision, which could be weeks, if not months, from today. Such an approach is rare by this agency and is one that I cannot support here, not only because it is important for the California High-Speed Rail Authority to know the reasons we reached this finding, but also to inform other States that are planning high-speed rail projects so they can ensure full compliance with our regulations, as appropriate.

Further, I believe that if we have enough information to conclude that we have jurisdiction over this matter, we also have enough information to determine whether it falls within the statutory exemption criteria under 49 U.S.C. § 10502. In my view, continued regulation by the Board is necessary here to carry out the rail transportation policy of 49 U.S.C. § 10101, and a project of this size and magnitude in terms of cost and miles—estimated at over \$68 billion and 800 miles of rail line—is not one of “limited scope.” We should direct the Authority to file an application so that the Board can fully review and analyze the proposal. The scope of the project and significant interest in public participation, which this decision itself recognizes, mandates it.

I can appreciate the Board's desire to meet the Authority's request for expedited consideration, and it is unfortunate that the Authority didn't come to the Board in a more timely manner than it did. But the Authority's own deadline should not come at the expense of a full and thorough review by the Board.

Derrick A. Gardner

Clearance Clerk

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